

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s): Caroen	
Application No.: 10/549,551	Group Art Unit: 3654
Filed: 9/19/2005	Examiner: Thomas J Brahan
Title: A Containment Device	Confirmation No: 3821
Attorney Docket No.: URQU.P-019	
Customer No.: 57381	

Replacement - BRIEF FOR APPELLANT

This brief is filed in support of Applicants' Appeal from the final office action mailed December 17, 2008. Consideration of the application and reversal of the rejections are respectfully urged.

Real Party in Interest

The real party in interest is Stannah Stairlifts Limited.

Related Appeals and Interferences

To Applicants' knowledge there are no related appeals or interferences.

Status of Claims

Claims 3-5, 7, 8, 10-13, 19, and 24 are pending, rejected, and herein appealed. Claims 1, 2, 6, 9, 14-18, 20-23 are canceled.

Status of Amendments

No amendment after final rejection have been made. The arguments filed on April 3, 2009 in response to the final office action have been entered.

Summary of Claimed Subject Matter

The claims of the present invention relate to containment devices (e.g. seat belts) for stairlifts that can transport a passenger up and down a set of stairs (Page 1 lines 1-6 of the specification). There are two independent claims, 19 and 24. Claim 19 claims a stairlift chair having a containment device (page 7 lines 16-19 and page 9 lines 13-23). The containment device has a housing (Page 9 lines 13-23, and callout 28 in Figs. 2-4) comprising a fixing component (Page 9 lines 13-23, and callout 30 in Figs. 2-4); a reel carrier displaceable toward, and engageable with a fixing point on a lateral side of the stairlift chair via said fixing component (Page 9 lines 13-23); a reel rotatably mounted within said reel carrier (Page 9 lines 13-23); a first belt (callout 26 in Figs. 2-4) fixed at one end to said chair and at the other end to said reel for winding on to, and from, said reel (Page 9 lines 13-23); and a second belt (callout 75 in Figs. 10A and 10B) fixed at one end to said chair and at the other end to said reel carrier (page 13 lines 7 to 22), one of said first and second belts being fixed at a lateral side of the stairlift chair opposite the fixing point and configured to pass over the lap of a user and the other of said first and second belts being fixed to a raised point on the stairlift chair on the same lateral side as the first belt and configured to pass over a shoulder of a user (page 13 lines 7 to 22).

Claim 24 and the balance of claims of the application claim a stairlift chair (page 8 lines 1 to 5 and callout 13 in Figs. 1A and 1B) including:

- (a) a chair having a front, a back, and two spaced lateral sides (page 8 lines 1 to 5 and callouts 16A and 16B in Figs. 1A and 1B) ;
- (b) means for attaching said chair with a stairlift rail (page 8 lines 1 to 5 and callout 12 in Figs. 1A and 1B); and
- (c) a containment device (page 9 line 13 to page 11 line 18 and callout 20 in Figs. 1A and 1B), said containment device comprising

- a fixing point (page 9 lines 24 to 27 and callout 30 in Figs. 2, 3, 4, 5, and 8) mounted on or adjacent one of said spaced sides (page 10 lines 14 to 28 and callout 16B in Figs. 2, 3, and 8);

- a reel carrier having a housing (page 10 lines 14 to 28 and callout 28 in Figs. 2, 3, 4, 5

and 9) sized and shaped to locate comfortably within a users hand (original claim 6) and having a fixing component (page 10 lines 14 to 28 and callout pin 36 in Figs. 4, 6, 7, and 9) integral with the housing, which fixing component is engageable with the fixing point;

a reel (page 11 lines 19 to 26 and callout 54 in Fig. 7) rotatably mounted in said reel carrier;

a length of belt (page 11 lines 19 to 26 and callout 26 in Fig. 7) wound onto, and fixed at one end to, said reel and having an opposite free end (page 9 lines 13 to 23 and callouts 24 and 25 in Fig. 4), wherein the opposite free end is fixed on or adjacent to the other of said spaced sides (page 9 lines 13 to 23 and callout 16A in Figs. 1A and 1B), and wherein said reel carrier is displaceable laterally between said spaced sides to position said fixing component for engagement with said fixing point (page 9 lines 13 to 23).

Grounds of Rejection to be reviewed on Appeal

I. Claims 5, 10-12, and 24 are rejected under 103(a) as obvious over Tremblay (US 5,373,915) in view of Nicholas (US 3,272,557).

II. Claims 3 and 4 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Gray (US 5,549,356).

III. Claims 7 and 8 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Compeau (US 4, 319,769) or Takada (US 4, 655,477).

IV. Claims 13 and 19 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Berton (US 3,236,540).

Argument**I. Claims 5, 10-12, and 24 are rejected under 103(a) as obvious over Tremblay (US 5,373,915) in view of Nicholas (US 3,272,557).**

As a first matter Applicants note that independent claim 24 and dependent claims 5 and 10-12 claim containment devices (e.g. seat belts) for passenger chairs located on stairlifts. Stairlifts are used to transport passengers up and down staircases. Typically stairlifts are located in a person's home or workplace to aid in the quality of life of people with limited mobility. People with limited mobility often have physical impairments which limit their ability to manipulate objects including containment devices found on stairlift chairs. The present invention provides these limited mobility and limited dexterity passengers with the ability correctly operate a containment device to ensure a safe ride on the stairlift.

***The Examiner's Combination of Non-Analogous Art and Use of Improper Hindsight***

The Examiner's rejections of the claims include the use of a reference in the art of stairlifts (e.g. Tremblay) combined with several references (e.g. Nicholas and other tertiary references) showing seat belts for automobiles. In response to arguments provided against these non-analogous combinations the Examiner's simply maintains that because "the seat belts are used for the same function, a teaching in one area can be used in the other." See the December 17, 2008 Final Office Action at Page 3 paragraph 6. The Examiner's conclusion oversimplifies the functional requirements of the two types of seat belts, and thus fails to consider the practical realities, differences, and the arts as a whole.

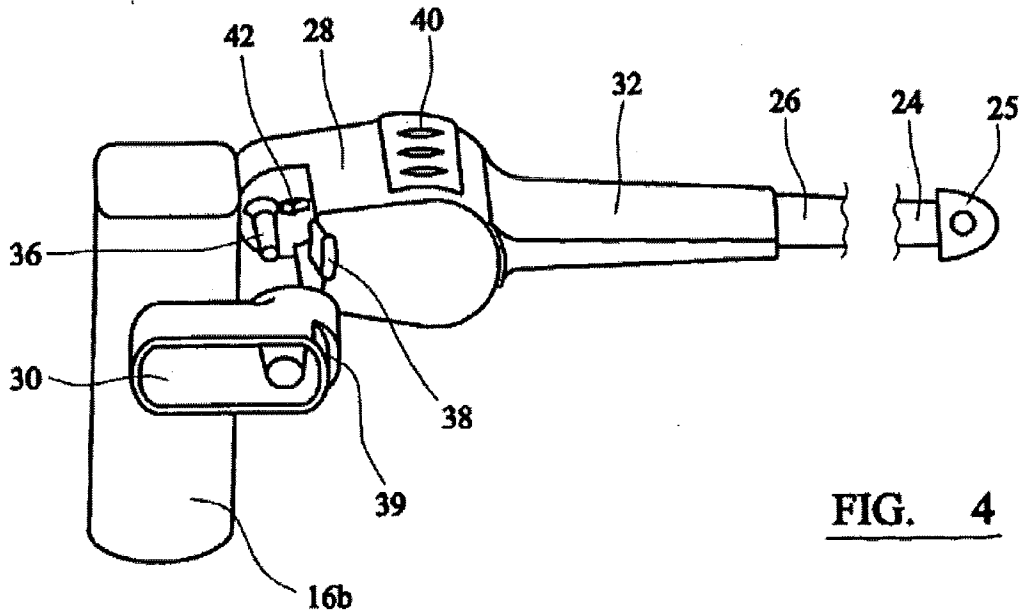
As noted above, stairlift chairs are used by persons who have some degree of infirmity but who generally desire to maintain the greatest degree of independence possible. They do not need to deal with safety at high speeds, but they must be easily operated or they will not be used. In contrast, the automobile safety belts of the secondary reference Nicholas and tertiary references Berton and Tekada and the child safety seats of the further tertiary references Gray and Compeau are intended to provide restraint systems for automotive seats. Moreover, child safety

seats are designed for persons totally dependent on outside assistance, and indeed may be configured to make outside assistance mandatory so that children cannot release themselves from the seat.

Applicants also note that, in an automobile, the seat and the occupant are held in position within the body of the car, and thus have a fixed shell surrounding both to which the components can be attached. Indeed, for safety in automobile seat belts, the attachment points need to be on the car, not the chair, so that the seat does not become merely an ejection seat during a collision. This cannot be done in a stairlift, since the chair (and its occupant) must be able to move relative to the adjacent structure (rail and/or wall). Lastly, the need for precise and separate tensioning of an automotive seatbelt is not of particular significance in stairlift chairs, since the speed involved is not significant.

Thus, when considered as a whole, belts for stairlift chairs have very different functional requirements and concerns than car seat belts. Therefore, the Examiner's assertion that a seat belt is a seat belt is inappropriate and the Examiner's combination of references between the two separate and distinct arts are likewise inappropriate. The only rationale for combining Tremblay with Nicholas and tertiary references can be found in hindsight after the teachings of the present invention have been fully understood.

The containment devices of claim 24 and dependent claims 5 and 10-12 based thereon are depicted in Fig. 4.



**FIG. 4**

The containment device of claim 24 includes:

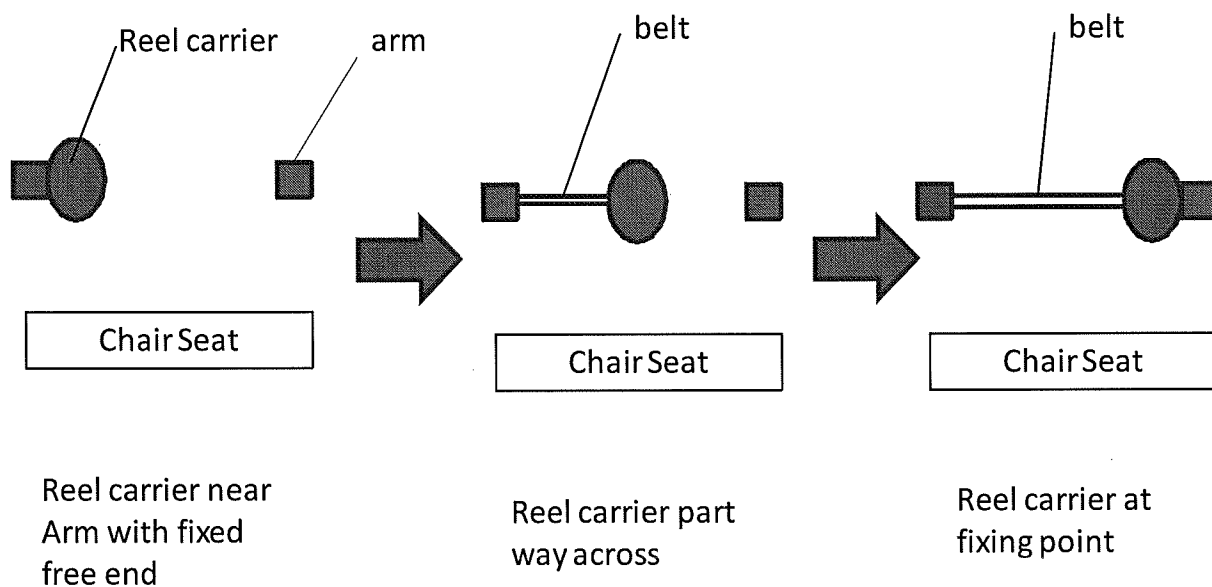
- a fixing point (30) mounted on or adjacent one of said spaced sides (16B);
- a reel carrier (28) having a housing sized and shaped to locate comfortably within a users hand and having a fixing component (36) integral with the housing, which

fixing component (36) is engageable with the fixing point (30 at socket 34 shown in Fig. 3);

a reel rotatably mounted in said reel carrier;

a length of belt (26) wound onto, and fixed at one end to, said reel and having an opposite free end (25), wherein the opposite free end is fixed on or adjacent to the other of said spaced sides (16A not called out in Fig. 4), and wherein said reel carrier is displaceable laterally between said spaced sides to position said fixing component for engagement with said fixing point.

Schematically, the operation of the containment device of claim 24 (when viewed from the front of the chair) can be depicted as follows:



Claim 24, and hence all dependent claims based thereon, are rejected under 103(a) as obvious over the combination of Tremblay in view of Nicholas., optionally in view of tertiary references. Claim 24 and dependent claims 5 and 10-12 based thereon are rejected solely over the combination of Tremblay and Nicholas.

Tremblay provides a stair lift chair having a seat belt. However, the Examiner acknowledges (Final Office Action of 12/17/2008, ¶ 2) that this seat belt does not have any of the features required in claim 24. For these features, the Examiner cites Nicholas for providing the seat belt as presently claimed.

Nicholas describes a seat belt for use in an automobile (not a stairlift chair) that includes a belt retractor. In all of the depicted embodiments of Nicholas, this retractor is fixed on the floor, adjacent to the seat and not on a side of the seat, for example retractor 40 is within receptacle 20 shown in the Nicholas' figures. In issuing the present rejection, however, the Examiner relies on the last three lines of column two of Nicholas, which read:

*The retractor may be one which travels with the belt, or it may be one which is permanently secured to the ear 41, and thereby remains stationary within the receptacle. (Col. 2, lines 70-71).*

The Examiner equates this one very general disclosure with a teaching of ALL of the limitations of the present claims that he acknowledged were missing from Tremblay. The Examiner's combination of references and articulated rejection presents the following deficiencies in his desired goal of establishing a *prima facie* case for obviousness against the claims of the present application:

- (1) The Examiner has offered no evidence of what kind of retractor that travels with the belt was known at the time of the Nicholas patent.



(2) The Examiner has failed to offer any reasoning as to why a person skilled in the art would assume or understand from Nicholas that the limitations of the claims, in which the fixing component is part of the housing (*see* claim 19 or “formed integral with the housing” of claim 24), *inter alia*, were taught by this statement.

(3) Further to (2), the spring loaded retraction mechanism of Nicholas is said to be used regardless of the position of the retractor. Therefore, it must be understood that the retraction occurs in response to a loss of tension on the belt. (Col. 3, lines 1-5) Therefore, Nicholas provides no requirement or teaching for a retractor housing that directly interacts with the fixing point when the belt is buckled.

(4) Nothing in Nicholas shows attachment of the belt to a chair, as opposed to a space adjacent to a chair. Thus, the teachings of Nicholas when combined with the teachings of Tremblay, in a manner not guided by hindsight, does not arrive at the present invention.

(5) The only reasoning for the combination of these references provided by the Examiner is a simple conclusory statements that a seat belt is a seat belt and that the combination renders all limitations of the claims obvious.

Indeed, the Examiner has failed to address all limitations of the claims in the manner that they have been presented, has failed to present clear rationale supporting the combination, and has therefore failed to maintain a *prima facie* case for obviousness against the claims.

Assuming *arguendo* that the Examiner had addressed all limitations of the claims, which he has not, the only reason for one skilled in the art to combine Nicholas’ three line disclosure of a traveling retractor with Trembley’s seat belt comes in hindsight after the present invention is fully understood. However, retractors for car seat belts are likely to have inertial mechanisms, which cause the belt to lock in response to certain types of movements (like the rapid pull or a

sudden stop). This is not only unnecessary in the slow moving stair lift chair, but it is likely to give rise to user frustration that would lead to undesirable non-use by the chair occupant.

Applicants remind the Board that “[a] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.” *KSR Int’l v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). To find obviousness, the Examiner is required to “identify a reason that would have prompted a person of ordinary skill in the art in the relevant field to combine the elements in the way the claimed new invention does.” *Id.* Furthermore, “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, No. 04-1616 (CAFC March 22, 2006) citing *In re Lee*, 277 F.3d 1338, 1343-46 (Fed. Cir. 2002); and *In re Rouffett*, 149 F. 3d 1350, 1355-59 (Fed. Cir. 1998). “When the [Examiner] does not explain motivation, or the suggestion or teaching, that would have led the skilled artisan at the time of the invention to the claimed combination as a whole, [it is] infer[red] that the [Examiner] used hindsight to conclude that the invention was obvious.” *Id.* Additionally, “[a]lthough the suggestion to combine references may flow from the nature of the problem, ‘[d]efining the problem in terms of its solution reveals improper hindsight in the selection of prior art relevant to obviousness.’” (internal citation omitted) *Id.*, quoting *Monarch Knitting Mach. Corp. V. Sulzer Morat GmbH*, 139 F.3d 877, 881 (Fed. Cir. 1998); *In re Beattie*, 974 F.2d 1309, 1312 (Fed. Cir. 1992). The Examiner is still required to address each and every limitations of the claims in the manner that it is presented. The Examiner has failed to do so, and thus has failed to present a *prima facie* rejection to the claims.

## **II. Claims 3 and 4 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Gray (US 5,549,356).**

These claims are dependent upon claim 24 and are rejected under 103(a) as obvious over Tremblay in view of Nicholas as described above and further in view of Gray. Once the rejection

to claim 24 is overcome, so too shall the rejections to these dependent claims. Applicants furthermore incorporate herein by reference their argument provided above regarding the non-analogous nature of this tertiary reference as well as the secondary reference (e.g. Nicholas). The combination of Gray with Tremblay is clearly improper. Even if the combination were proper, Applicants note that Gray fails to overcome the deficiencies with regard to the primary combination of Tremblay and Nicholas as described above.

**III. Claims 7 and 8 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Compeau (US 4, 319,769) or Takada (US 4, 655,477).**

These claims are dependent upon claim 24 and are rejected under 103(a) as obvious over Tremblay in view of Nicholas as described above and further in view Compeau or Takada. Once the rejection to claim 24 is overcome, so too shall the rejections to these dependent claims. Applicants furthermore incorporate herein by reference their argument provided above regarding the non-analogous nature of this tertiary reference as well as the secondary reference (e.g. Nicholas). The combination of either tertiary reference with Tremblay is clearly improper. Even if the combination were proper, Applicants note that these tertiary references fail to overcome the deficiencies with regard to the primary combination of Tremblay and Nicholas as described above.

**IV. Claims 13 and 19 are rejected under 103(a) as obvious over Tremblay in view of Nicholas and further in view of Berton (US 3,236,540).**

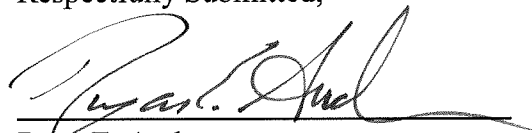
Applicants arguments with regard to the rejections of claim 24 over the combination of Tremblay and Nicholas are incorporated into this section herein by reference. The containment device of the only other independent claim of the present application (e.g. claim 19) includes similar elements to claim 24 and also further includes a second belt attached to the reel carrier (28) and to the same spaced side (16A) as the opposite free end (25) of the first belt describe above. Claim 19 requires one of the belts to cross the lap of a passenger (e.g. the belt of claim 24) with the other belt to cross the shoulder.

Claims 13 and 19 are therefore narrower in scope than claim 24 and once the Board overturns the rejections of claim 24, overturning the rejections to claims 13 and 19 should automatically follow. Nonetheless, in the following text, Applicants direct the Board's attention to some additional deficiencies in the Examiner's rejections.

As discussed above, Nicholas does not disclose a reel carrier housing combination like that of the claims. Berton discloses a shoulder belt and a lap belt combination. Each is closed by a separate buckle mechanism 19 in the middle of the belt. Thus adding the shoulder belt of Berton to the combination of Tremblay and Nicholas would not result in the claimed invention, since there is no teaching in Berton of the shoulder belt being even attached to a common buckle with the lap belt. Thus, this combination of references does not teach all of the elements of claim 19 (and claim 13) for this additional reason.

For these reasons, Applicant requests the Board to overturn all of the Examiner's rejections and Applicant submits that this application is now considered to be in condition for allowance. Such actions are earnestly solicited.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Ryan E. Anderson", written over a horizontal line.

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Reg. No. 51,405

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**Claims Appendix:**

3. A stairlift chair as claimed in claim 24, further including locking means operable to lock the position of said belt with respect to said reel carrier, said chair being characterised in that the act of engaging the fixing component of said reel carrier to the fixing point causes said locking means to operate.
4. A stairlift chair as claimed in claim 3 wherein said locking means operates to lock said reel within said reel carrier.
5. A stairlift chair as claimed in claim 24 further including retraction means to retract said belt into said reel carrier.
7. A stairlift chair as claimed in claim 24 wherein the point at which said belt enters and exits said reel carrier is surrounded by a support member.
8. A stairlift chair as claimed in claim 7 wherein said support member has a degree of flexibility which is less than the flexibility of said belt.
10. A stairlift chair as claimed in claim 24 including two spaced armrests, the free end of said belt being attached to one of said armrests, and said reel carrier being removeably connectable to a fixing component attached to the other of said armrests.
11. A stairlift chair as claimed in claim 10 wherein each of said armrests includes a forward edge and a rear edge, said containment device extending between points on said armrests closer to the forward edges than said rear edges thereof.

12. A stairlift chair as claimed in claim 11 wherein the point of connection between said reel carrier and said armrest is within the sight of a stairlift user.

13. A stairlift chair as claimed in claim 24 including a further belt configured to, in use, pass over a shoulder of a user, said further belt being connected to, or being adapted to connect to, said reel carrier.

19. A stairlift chair having a containment device, said containment device having a housing comprising a fixing component; a reel carrier displaceable toward, and engageable with a fixing point on a lateral side of the stairlift chair via said fixing component; a reel rotatably mounted within said reel carrier; a first belt fixed at one end to said chair and at the other end to said reel for winding on to, and from, said reel; and a second belt fixed at one end to said chair and at the other end to said reel carrier, one of said first and second belts being fixed at a lateral side of the stairlift chair opposite the fixing point and configured to pass over the lap of a user and the other of said first and second belts being fixed to a raised point on the stairlift chair on the same lateral side as the first belt and configured to pass over a shoulder of a user.

24. A stairlift chair comprising:

(a) a chair having a front, a back and two spaced lateral sides;

(b) means for attaching said chair with a stairlift rail; and

(c) a containment device, said containment device comprising

a fixing point mounted on or adjacent one of said spaced sides;

a reel carrier having a housing sized and shaped to locate comfortably within a users hand and having a fixing component integral with the housing, which fixing component is engageable with the fixing point;

a reel rotatably mounted in said reel carrier;

a length of belt wound onto, and fixed at one end to, said reel and having an opposite free end, wherein the opposite free end is fixed on or adjacent to the other of said spaced sides, and

wherein said reel carrier is displaceable laterally between said spaced sides to position said fixing component for engagement with said fixing point.

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**Evidence Appendix**

None



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**Related Proceedings Appendix**

None